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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/041,768	10/31/2001	Edward F. Miller	EVLDP001	3198
22434	7590	12/28/2005	EXAMINER	
BEYER WEAVER & THOMAS LLP			HUYNH, BA	
P.O. BOX 70250			ART UNIT	
OAKLAND, CA 94612-0250			PAPER NUMBER	

2179

DATE MAILED: 12/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/041,768

Applicant(s)

MILLER ET AL.

Examiner

Ba Huynh

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 23-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 23-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

The declaration filed on 10/17/05 under 37 CFR 1.131 has been considered but is ineffective to overcome the US 6,754,701 (Kessner) reference.

The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Kessner reference to either a constructive reduction to practice or an actual reduction to practice.

### ***Claim Rejections - 35 USC § 102***

Claims 1 is rejected under 35 U.S.C. 102(e) as anticipated by US patent #6,754,701 (Kessner).

- As for claim 1: Kessner teaches an improvement of network browser application, wherein the browser has built-in capabilities to perform analysis and testing of websites residing on the Internet (3:37 – 4:34).

Claims 1 is rejected under 35 U.S.C. 102(b) as anticipated by US patent #5,974,572 (Weinberg et al).

- As for claim 1: Weinberg et al teach an improvement of network browser application, wherein the browser has built-in capabilities to perform analysis and testing of websites residing on the Internet (1:27-32, 2:66 – 3:4).

***Claim Rejections - 35 USC § 103***

Claims 2-5, 23-33 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over US patent #5,974,572 (Weinberg et al) in view of US patent #6,418,544 (Nesbitt).

- As for claim 2: Weinberg et al (hereinafter Weinberg) teaches a test-enabled web browser, comprising:

standard browsing components, a load testing components that operate to test a website server in accordance with a load, a graphical user interface to provide user access to the standard browsing components and the load testing components, wherein when the load testing component is activated, a number of multiple copies of the browser on a single client machine, with each of the copies of the browser separately executing a playback script (See abstract, summary of the invention 3:46-65; 7:63-8:15); and

wherein the load applied to the website server by the number of multiple copies of the test-enabled browser is dependent on the number (1:41-55). It is inherently included in Weinberg that the cache is turned off since Weinberg is silent regarding the using of stored documents in the cache. Even if it is not, implementation of load testing with cache turn off is well known in the art as disclosed by Nesbitt et al (2:7-3:43). One of skill in the art would be motivated to load testing with cache turn off to achieve realistic result as suggested by Nesbitt.

- As for claim 3: The test-enabled browser comprises at least one of a script record component and a script playback component (1:29-32, 2:58-65).

- As for claims 4, 5: It is inherently included in Weinberg 's teaching of Explorer that the standard browsing components comprises DLL components pertain to Explorer (fig 11).
- As for claim 23: The playback script was previously recorded based on user interaction with the test-enabled browser while accessing the website (1:29-32, 2:58-65, abstract).
- As for claim 24: The script record further records details for a given webpage being presented by the test-enabled browser (col 19, lines 62-65).
- As for claim 25: It is inherently included in Weinberg' that the details include checksum and item counts (3:25-30, 19:57-61). Even if it is not, implementation of checksum is well known in load testing (see 2003/0053420, par 0033, 0035). It would have been obvious to one of skill in the art, at the time the invention was made, to combine the well known implementation of checksum to Weinberg. Motivation of the combining is for determining the presence of error in the load test.
- As for claim 26: It is inherently included in light of Weinberg that the details are acquired by accessing the DOM of a given web page (see the teaching of HTML web page in col 5, lines 19-32).
- As for claim 27: The given web page is analyzed for properties of interest to a user, as specified and selected with user pull-down menu, and the required data is recorded into a script for later comparative use during playback (col. 2, lines 38-48, col 15, line 45 – col. 16, line 8).

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- As for claim 28: The test enabled browser includes script record and playback components (col. 2, lines 38-48).
- As for claim 29: The script playback component can adaptively playback the playback script (col 32, lines 48-63).
- As for claim 30: The test enabled browser comprises a download timing monitor component (col 32, line 64 – col. 33, line 8).
- As for claim 31: The test enabled browser further comprises a content validation component (col. 9, lines 28-53, col. 15, lines 46-52).
- As for claim 32: The test enabled browser further comprises a quality analysis component (col 2, lines 8-18 and col 32, line 64 – col 33, line 8).
- As for claim 33: The playback script was previously recorded based on user interaction with the browser while accessing the website (1:29-32, 2:58-65, abstract)

### ***Response to Arguments***

Applicant's arguments with respect to claim 1 and 2 have been fully considered but they are not persuasive.

#### **REMARKS:**

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. The arguments fail to point out which claim limitation(s) is not taught by the cited references. Accordingly, it is believed that the claims are not patentable over the cited references.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ba Huynh whose telephone number is (571) 272-4138. The examiner can normally be reached on Mon - Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (571) 272-4847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ba Huynh  
Primary Examiner  
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12/17/05

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